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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,572	09/05/2003	Jay T. Butler	03-01	9864
30699	7590	08/09/2004	EXAMINER	
DAYCO PRODUCTS, LLC 1 PRESTIGE PLACE MIAMISBURG, OH 45342			NICHOLSON, ERIC K	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/657,572	BUTLER, JAY T.	
	Examiner Eric K Nicholson	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-13 and 15-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent application publication 2002/0060453 to Spurgat.

As to claims 1 and 8, Spurgat illustrates a hose 24 and a clamp 12 wherein the clamp includes a band 20 and a screw housing 12 mounted to the band with a screw 16 disposed in the housing and engaging the band for tightening the band. A cover 10 is shown in figs. 2-4 having an opening receiving the screw housing 12 and a cover portion 26 over the screw housing. A bonding surface 28, 52 extends from the cover portion to attach the cover to the hose (page 2, paragraph 0021) and extends from the cover portion to a position on the hose that is displaced from the screw and screw housing so that the cover bracket can be adhered to the hose without interfering with the clamp operation. As to claims 2 and 9, the bonding surface includes a pair of runners 28 extending from the base. As to claims 3, 4, 11 and 12 the runners are curved about the same curvature as the hose (page 1, paragraph 0018). As to claims 5 and 12, the cover is shown in figs. 2-4 with an inverted U-shaped cross-section. As to claims 6 and 13, the cover further

includes an inside surface 48 having an inset that retains the screw housing within the cover when the screw is operated (page 2, paragraph 0020).

### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7,14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent application publication 2002/0060453 to Spurgat in view of U.S. patent 5,675,871 to Webb et al.. Spurgat as noted above discloses the claimed invention except for the cover 10 which is said to be made of plastic (page 1, paragraph 0018) is not said to be made of nylon or HDPE as required by claims 7 and 14. Webb et al. discloses that it is known in the art to provide a similar type coupling with the hose clamp holder 20 being made of Nylon (column 3, lines 50-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the hose clamp holder 10 of Spurgat from Nylon as taught by Webb et al.,

since both are hose clamp holders in the same field of endeavor and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### Conclusion

Applicant's remarks have been considered however are not deemed to be persuasive. Applicant argues that in the Spurgat device the adhesive is applied to a bonding surface proximate the screw housing which may lead to contamination of the screw mechanism and applicant has modified the claims to reflect this argument that the adhesive is applied to the portion of the bonding surface displaced from the screw and screw housing. The examiner disagrees, as clearly shown in figure 1 the adhesive 52 applied to the bonding surface of the runners is displaced from the screw and the screw housing such that contamination of the screw and the screw housing will not take place when applied as shown.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Nicholson whose telephone number is (703) 308-0829. The examiner can normally be reached on Tuesdays thru Fridays from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for Technology Center 3600 is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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4/20/04

  
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